

9 FAM 41.83 Notes

(TL:VISA-377; 03-29-2002)

9 FAM 41.83 N1 Background

(TL:VISA-156; 10-31-96)

On September 13, 1994 the President signed into law the Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103-322). Section 130001 of this Act amends the Immigration and Nationality Act (INA) by adding a new subparagraph (S) at INA 101(a)(15), thus establishing a new nonimmigrant (S) classification. This new subparagraph, which took effect immediately, provides for the admission of certain witnesses and other aliens who possess critical information relating to acts of terrorism and criminal behavior.

9 FAM 41.83 N2 S-5 Classification Under INA 101(A)(15)(S)(i)

(TL:VISA-377; 03-29-2002)

An alien may be classified as an S-5 nonimmigrant, if the Attorney General has determined that the:

- (1) Alien is in possession of critical reliable information concerning a criminal organization or enterprise;
- (2) Alien is willing to supply or has supplied such information to Federal or State law enforcement authorities or a Federal or State court; and;
- (3) Alien's presence in the United States is essential to the success of an authorized criminal investigation or the successful prosecution of an individual involved in the criminal organization or enterprise.

9 FAM 41.83 N2.1 S-6 Classification Under INA 101(a)(15)(S)(ii)

(TL:VISA-377; 03-29-2002)

An alien may be classified as an S-6 nonimmigrant, if the Secretary of State and the Attorney General jointly determined that the alien:

- (1) Is possesses critical, reliable information concerning a terrorist organization, enterprise, or operation;
- (2) Is willing to supply or has supplied such information to Federal law enforcement authorities or a Federal court;

(3) Will or has been placed in danger as a result of providing such information; and

(4) Is eligible to receive a reward under section 36(a) of the State Department Basic Authorities Act of 1956.

9 FAM 41.83 N2.2 Accompanying or Following to Join Dependents

(TL:VISA-377; 03-29-2002)

If determined appropriate by the Attorney General (or the Attorney General and the Secretary of State in the case of an alien classified under INA 101(a)(15)(S)(ii)), the accompanying or following to join spouse, married and unmarried sons and daughters, and the parents of an S-5 or S-6 alien may also be classified as S-7.

9 FAM 41.83 N3 Determining Eligibility for S Nonimmigrant Classification

(TL:VISA-377; 03-29-2002)

An S-5 or S-6 visa shall not be issued to an alien unless the Attorney General (and the Secretary of State in the case of an S-6) has determined that the alien qualifies for an S nonimmigrant visa. Specific procedures for determining eligibility have not yet been established. Posts must, however, seek an advisory opinion from the Department (CA/VO/L/A) before a visa may be issued.

9 FAM 41.83 N4 INA 212(d)(1) Waiver

9 FAM 41.83 N4.1 Alien Ineligible Under 212(a)

(TL:VISA-156; 10-31-96)

An alien otherwise classifiable as a nonimmigrant under INA 101(a)(15)(S), who is found to be ineligible under INA 212(a) (other than paragraph (3)(E)), may, if the Attorney General considers it to be in the national interest, be granted a waiver under INA 212(d)(1).

9 FAM 41.83 N4.2 Waiver Procedures

(TL:VISA-156; 10-31-96)

Waiver procedures have not yet been developed but will be sent to posts via telegram in the near future.

9 FAM 41.83 N5 Numerical Limitations

(TL:VISA-3377X; 03-29-2002)

INA 214(k) places an annual limitation on nonimmigrants who may be issued visas under INA 101(a)(15)(S)(i) and (ii) to 200 and 50 respectively.

9 FAM 41.83 N6 No Change of Status

(TL:VISA-156; 10-31-96)

An alien admitted to the United States under INA 101(a)(15)(S) is prohibited from changing status to another nonimmigrant classification.

9 FAM 41.83 N7 Adjustment of Status

(TL:VISA-377; 03-29-2002)

INA 245 provides for adjustment of status of aliens admitted as S-5 or S-6 to permanent resident status under certain circumstances:

9 FAM 41.83 N7.1 Adjustment from S-5 Status

(TL:VISA-377; 03-29-2002)

An alien who entered the United States as an S-5 under INA 101(a)(15)(S)(i) may apply for adjustment to permanent resident if it is the Attorney General's opinion that:

(1) The S-5 nonimmigrant has supplied critical, reliable information concerning a criminal organization or enterprise;

(2) Such information has substantially contributed to the success of an authorized criminal investigation or the prosecution of an individual involved in a criminal organization or enterprise;

(3) The alien is not ineligible under INA 212(a)(3)(E).

9 FAM 41.83 N7.2 Adjustment from S-6 Status

(TL:VISA-156; 10-31-96)

An alien who entered the United States as an S-6 under INA 101(a)(15)(S)(ii) may apply for adjustment to permanent resident if in the sole discretion of the Attorney General:

- (1) The S-6 nonimmigrant has supplied critical, reliable information concerning a terrorist organization, enterprise or organization;
- (2) Such information has substantially contributed to:
 - (a) The prevention or frustration of an act of terrorism against a U.S. person or U.S. property, or;
 - (b) The success of an authorized criminal investigation of, or prosecution, of an individual involved in such an act of terrorism; and
- (3) The nonimmigrant has received a reward under section 36(a) of the State Department Basic Authorities Act of 1956.